REMARKS

Status of the Claims

Claims 1-22 and 25-41 are pending in this application. Claims 23 and 24 were previously canceled without prejudice or disclaimer. Claims 1, 8, 20, 35, 36, 38, and 40 are independent.

Summary Of The Office Action

The outstanding Office Action is a final Action that sets forth various rejections of claims 1-22 and 25-41 under 35 U.S.C. §103(a).

Rejections under 35 U.S.C. § 103

A. Claims 1, 8, 9, and 38

Item 4 on page 3 presents a rejection of claims 1, 8, 9, and 38 under 35 U.S.C. § 103(a) as being unpatentable over Yoksza et al. (U.S. Patent No. 5,410,328, hereinafter "Yoksza") in view of Skene et al. (U.S. Patent Application Publication No. 2003/0069616, hereinafter "Skene") and Conway et al. (U.S. Patent No. 6,149,283, hereinafter "Conway"). This rejection is respectfully traversed.

Page 3 of the outstanding Action admits that Yoksza fails to teach the independent claim 1 requirement for a light emitter that "emits light having such a wavelength that affects a biorhythm." In actuality, the only subject matter of independent claims 1, 8, and 38 that can be reasonably alleged to be taught by Yoksza is the preamble subject matter of independent claims 1 and 38 as to a display device that will display "an image by using light of a light emitter" and similar subject matter in the claim 8 preamble relating to "an image display section for displaying an image."

To whatever extent that Skene teaches controlling the alertness of a human subject with particular light wavelengths, this is done with a light source maintaining sufficient light "enabling people to work correctly" as noted in relied on paragraph [0031]. The teaching in relied on paragraph [0032] of Skene is further concerned with using either one or two particular types of light sources to generate the desired wavelengths of light that can produce the required amount of work light as follows:

> Lighting systems having a light output of>100 lumen/Watt, a color rendering index (CRI)>=65 and the possibility to shift from melatonin suppressive radiation output of>=0.45 Melatonin Watt/Watt to<=0.2 Melatonin Watt/Watt, may contain a single light source but alternatively may contain first and second light sources. In the embodiment of the lighting system containing a single light source, the output of the single light source is adjustable, for example by adjusting the lamp voltage. An example of such a light source is an electrodeless low-pressure mercury discharge fluorescent lamp (QL). In the embodiment of a lighting system containing first and second light sources, the lighting system shifts from use of the first light source to use of the second light source or vice versa. In the lighting system the first light source has a relatively high melatonin suppressive radiation output, for example a high-pressure mercury discharge lamp with>=0.45 Melatonin Watt/Watt, and the second light source has a relatively low melatonin suppressive radiation output, for example a white high-pressure sodium discharge lamp with<=0.15 Melatonin Watt/Watt. Both light sources having a light output of>=200 lumen/Watt and a color rendering index (CRI) of>=65 during nominal operation.

Clearly, whatever else could be said of these Skene taught light source(s) to provide work environment lighting, it cannot be **reasonably** said that Skene teaches or suggests the use of a display as being a suitable light source for this intended purpose.

In this last regard, *In re Kotzab* 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) notes that "[reference] statements cannot be viewed in the abstract. Rather they must be considered in the context of the teaching of the entire reference." Further note *In re Wesslau*, 353 F.2d 238, 241, 147 USPQ 391, 393 (CCPA 1965) stating that "it is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art." Thus, it is clearly impermissible to pluck just the biorhythm wavelengths taught by Skene out of the Skene work lighting context and the LED display modules of Yoksza out of the large-scale array display context of Yoksza and to then add assumptions as to the below noted "data" being video and the other below noted conjectural assumptions to arrive at the subject matter of Applicant's independent claims 1, 8, and 38.

Furthermore, there is no teaching or reasonable suggestion in Skene that would have suggested using any kind of display as a light source suitable for maintaining sufficient light "enabling people to work correctly" (as noted in relied on paragraph [0031] of Skene). There is

also no reasonable teaching suggesting of the use of large-scale array display having LED modules, like the one taught by Yoksza, as such a light source in either reference.

Clearly, these two disparate references further cannot be combined without substantial modification of the wiring and driving of the large-scale array display of Yoksza to try to enable it to maintain sufficient light for working as noted in relied on paragraph [0031] of Skene. In this last respect, there is also no hint as to the required modifications could be done without rendering the Yoksza display unsuitable for its intended display purposes.

Thus, the outstanding Action again fails to follow MPEP § 706.02(j) as noted in the last response. In this regard, as this is a rejection under 35 U.S.C. 103(a), this section of the MPEP requires that "the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter" is to be identified. This section of the MPEP also points out that the examiner "must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references. *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985)."

Not only are the required modifications to Yoksza to enable it to maintain the sufficient light noted in relied on paragraph [0031] of Skene not identified, no convincing line of reasoning has been presented as to why the artisan would have been led to even try to modify the Yoksza display to provide for illuminating a work environment with sufficient light "enabling people to work correctly."

Further in this last regard, the need to provide this lighting for illuminating a work environment with sufficient light "enabling people to work correctly" would seriously impact on the conflicting need to provide a display having the daisy-chain wiring taught by FIG. 8 with the operation taught at col. 4, lines 23-51. Any proposed modification that would cause such major modifications and change the basic operating principle of the reference is not an obvious one. *See In re Ratti,* 270 F.2d 810, 813, 123 USPQ 349, 352 (CCPA 1959). Moreover, reference modifications that would render a reference unsatisfactory for its intended purpose are also not obvious. *See In re Gordon*, 733 F.2d 900, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

To whatever extent that the outstanding Action further attempts to rely on the undisclosed subject matter that might be encompassed by the broad claim recitations of either Skene or Yoksza as being actual subject matter suggested by these references, this is not the case. Instead,

it is well established that "[t]he scope of a patent's claims determines what infringes the patent; it is no measure of what it discloses," *see In re Benno*, 768 F.2d 1340, 226 USPQ 683, 686 (Fed. Cir. 1985).

Moreover, as noted by the Supreme Court, "there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." KSR Int'l v. Teleflex Inc., 127 S.Ct. 1727, 82 USPQ.2d 1385, 1396 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir 2006)). The outstanding Action includes no rational underpinning as to some logical reason (the above-noted convincing line of reasoning, for example) that the artisan would have believed that the large-scale display system of LED modules of Yoksza should be adapted to operate like the lighting systems suggested by Skene (that must be suitable to provide sufficient light "enabling people to work correctly" as noted in relied on paragraph [0031] of Skene) while maintaining the existing display functionality required by Yoksza. In this regard it is believed to be well understood that display systems are designed to provide contrast for viewing and not to provide sufficient light to illuminate a work space.

Beside the inadequate explanation as to some reasonable basis why the artisan would have been led to modify the Yoksza display system of LED modules to operate as a lighting system of the type taught by Skene, the outstanding Action admits that neither of these references teach the requirement of independent claim 1 as to having the intensity of the "light having the wavelength which affects the biorhythm" being "increased or decreased relative to an input video signal at a higher rate than an intensity of light having another wavelength that has no affect on biorhythm." A similar recitation appears in independent claim 8 (as to "a characteristic of a luminous intensity of the first light emitter with respect to a video signal inputted into the image display section is switched, so that an amount of light of the first light emitter is increased or decreased at a higher rate than another light emitter for emitting light having another wavelength that has no affect on biorhythm") and in independent claim 38 (as to "controlling an intensity of the light having the wavelength that affects a biorhythm, so that the biorhythm is regulated while the image is displayed on a display surface of the display device using the light having the wavelength that affects a biorhythm").

The outstanding Action turns to Conway at page 4-6 and alleges that this reference teaches the intensity of the "light having the wavelength which affects the biorhythm" is "increased or decreased relative to a video signal at a higher rate than an intensity of light having another wavelength that has no affect on biorhythm."

The actual teachings of Conway are directed to a lamp that uses adjustable LEDs of different colors to provide dimming and color mixing for the light produced by the lamp. Applicant can find no Conway teaching of adjusting the light output from this lamp to have the "wavelength which affects the biorhythm" as incorrectly stated at page 4, for example. Also, there is no mention in Conway of any lamp lighting effect being "increased or decreased relative to a video signal" and none teaching any increase or decrease of anything "at higher rate than an intensity of light having another wavelength that has no affect on biorhythm."

In this last respect, while Conway does teach using potentiometers for adjusting power to control the light color and dimming (col. 4, line 66 to col. 5, line 17), and that the control of the potentiometers can be automated (col. 5, lines 11-13), this potentiometer control is clearly not taught or suggested to be for increasing or decreasing light output "relative to a video signal at a higher rate than an intensity of light having another wavelength that has no affect on biorhythm" as required by independent claim 1, for example

Apparently realizing these deficiencies of Conway, page 4 of the outstanding Action (and the sentence bridging pages 5 and 6 thereof) attempts to edit col. 3, lines 47-60 of Yoksza to change the word "data" (actually "commands and data at line 57 of col. 3) into the different word "video." This the Examiner cannot do. It is the reference that must teach that these two seemingly different words are intended to mean the same thing and not the Examiner. *See In re Kotzab, supra*. Also *see In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967) ("The Patent Office has the initial duty of supplying the factual basis for its rejection. It may not ... resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis."). To the extent that FIG. 3B shows the letter "E," display of the letter "E" is not a "video" display if the word "video" is interpreted in any reasonable manner.

Moreover, the conjectural "if" statements of the outstanding Action at the bottom of page 4 (relative to independent claim 1), at the top of page 6 (relative to independent claim 8), and in the paragraph bridging pages 7 and 8 (relative to independent claim 38) (e.g., "if the user wants

…," "if the input video … is an on/off signal") are just that, conjecture, they are not the "substantial evidence" that the PTO must produce. *See In re Lee*, 277 F.3d 1338, 1342, 61 USPQ2d 1430, 1433-34 (Fed. Cir. 2002).

Furthermore, even if the above-noted interpretation at page 4 of the outstanding Action (see lines 6-9) that alleges that col. 3, lines 47-60 of Yoksza "discloses supplying a data signal," that is here characterized as a "video signal, "to a LED module 10, wherein a plurality of the LED modules make up a large-scale display 100" where correct, which is not the case as noted above, this stated reliance on Yoksza taken with the stated reliance on Conway (also at page 4 of the outstanding Action, see lines 3-21) are insufficient to meet the limitations of claim 1.

In this last respect, page 4 of the outstanding Action (see lines 10-12) states that Conway "discloses a lighting device 10 which can generate a color with a specific primary wavelength by individually adjusting the power supplied to each of a red set of LEDs, a blue set of LEDs, and a green set of LEDs" at col. 4, line 66-col. 5, line 17. It is then contended that if a user wants the primary wavelength of the light emitted to be blue light (450-490nm), then the power supplied to the blue set of LEDs would be greater than the power supplied to the red or green set of LEDs. If the data signal (that is improperly construed to be a video signal in the outstanding Action) is an on/off signal, then the intensity of the blue light (the light having a wavelength affects a biorhythm would increase or decrease relative to the input signal at a rate higher than light of the other wavelengths (red and green light).

Moreover, while Conway discloses adjusting the power supplied to the above-noted individual color LED sets, there is clearly no teaching or suggestion in Conway of adjusting the power supplied to the above-noted individual color LED sets relative to a video signal. Further in this regard, teaches that the arrangement of the above-noted individual color LED sets can be used "conveniently and broadly, without … other accessory equipment or controls." See col. 3, lines 35-37. Thus the teachings of Conway would have indicated to one of ordinary skill in the art that it would **not be appropriate** to add "accessory equipment or controls" to adjust the intensity of the light from the above-noted individual color LED sets relative to an input video signal.

Also, and as mentioned above, there is clearly no teaching or suggestion in Conway of adjusting the power supplied to the above-noted individual color LED sets according to a

wavelength which affects a biorhythm. Thus, to whatever extent that Conway suggests that the power supplied to the blue set of LEDs could be greater or less than the power supplied to the red or green set of LEDs, there is no mention in Conway for this adjusting to be done according to a wavelength which affects a biorhythm.

Furthermore, while Yoksza teaches "the large-scale display 100 is programmed to provide commands and data to the LED module 10" (see Yoksza at col. 3, lines 56-58), there is no reasonable teaching or suggestion in Yoksza of adjusting the intensity of the data being supplied, much less that the supplied data is intended to be what the artisan would understand to be a video signal. Clearly, the outstanding Action fails to establish any reasonable basis as to why a person of ordinary skill in the art would have been to even try to combine the "commands and data" of Yoksza with the adjustable power supply teachings of Conway that, in any event, fall short of the subject matter set forth by the independent claims.

Therefore, even if the artisan were to improperly selectively dissect each reference to extract only selected teachings out of context and then combine such dissected teachings as the Examiner suggests (in clear violation of *In re Wesslau, supra*), the result would still fall short of the subject matter of claim 1 as none of these references that are relied upon teach or suggest that an intensity of the light having the wavelength which affects the biorhythm is increased or decreased relative to an input video signal, or even some other input signal "at a higher rate than an intensity of light having another wavelength that has no affect on biorhythm" or the similar subject matter of independent claim 8. Further, the recital of independent claim 38 requiring "controlling an intensity of the light having the wavelength that affects a biorhythm, so that the biorhythm is regulated while the image is displayed on a display surface of the display device using the light having the wavelength that affects a biorhythm" would also be lacking.

Accordingly, as the PTO has failed to produce the "substantial evidence" required to establish a *prima facie* case of obviousness as to the subject matter of independent claims 1, 8, and 38, the withdrawal of the rejection of independent claims 1, 8, and 38 under 35 U.S.C. § 103(a) as being unpatentable over Yoksza in view of Skene and Conway is respectfully requested.

Claim 9 depends from claim 8, and it is, therefore, respectfully submitted to be patentable over the combination of Yoksza in view of Skene and Conway for at least those reasons

presented above with respect to independent claim 8. Reconsideration and withdrawal of the rejection of dependent claim 9 under 35 U.S.C. § 103(a) over these references is, thus, also respectfully requested.

B. Claims 2-4 and 10-12

Item 5 on page 8 of the outstanding Action presents a rejection of claims 2-4 and 10-12 under 35 U.S.C. § 103(a) as being unpatentable over Yoksza in view of Skene and Conway in further view of Terman et al. (U.S. Patent No. 5,589,741, hereinafter "Terman"). This rejection is respectfully traversed.

Terman is cited as to the subject matter added by dependent claims 2-4 and 10-12 and does not cure the deficiencies noted above as to the reliance on Yoksza in view of Skene and Conway. Accordingly, claims 2-4 and 10-12 patentably define over the applied references for at least the same reasons that respective parent independent claims 1 and 8 do. Therefore, withdrawal of this improper rejection of claims 2-4 and 10-12 under 35 U.S.C. §103(a) as being allegedly unpatentable over Yoksza in view of Skene and Conway in further view of Terman is respectfully requested.

In addition, it is noted that claims 2-4 and 10-12 add features to those of the respective base independent claims 1 and 8. For example, dependent claims 4 and 12 require either control (claim 4) or switching (claim 12) "based on contents information indicating what type of program the image is." The outstanding Action makes absolutely no effort to properly construe the language "based on contents information indicating what type of program the image is" before improperly merely concluding that the Terman teachings of adjusting light intensity based on time, user input, and to simulate various weather conditions somehow teaches this feature. In this regard, the PTO reviewing court has emphasized that such conclusory findings that omit a proper analysis as to such a claimed feature are improper. *See Gechter v. Davidson*, 116 F.3d 1454, 1460, 43 USPQ2d 1030, 1035 (Fed. Cir. 1997).

Therefore, claims 2-4 and 10-12 patentably define over the applied references for at least these reasons as well. Therefore, withdrawal of this improper rejection of claims 2-4 and 10-12 under 35 U.S.C. §103(a) as being allegedly unpatentable over Yoksza in view of Skene and Conway in further view of Terman is also respectfully requested on this basis.

C. Claims 5 and 13

Item 6 on page 10 of the outstanding Action presents a rejection of claims 5 and 13 under 35 U.S.C. § 103(a) as being unpatentable over Yoksza in view of Skene and Conway in further view of Kerr et al. (U.S. Patent No. 7, 236, 154, hereinafter "Kerr"). This rejection is respectfully traversed.

Kerr is cited as to the subject matter added by dependent claims 5 and 13 and does not cure the deficiencies noted above as to the reliance on Yoksza in view of Skene and Conway as to respective parent independent claims 1 and 8.

Accordingly, it is respectfully submitted that dependent claims 5 and 13 patentably define over the applied references for at least the same reason that respective parent independent claims 1 and 8 do and withdrawal of this improper rejection of dependent claims 5 and 13 under 35 U.S.C. §103(a) as being allegedly unpatentable over Yoksza in view of Skene and Conway in further view of Kerr is respectfully requested.

D. Claims 6, 7, and 14-19

Item 7 on page 11 of the outstanding Action presents a rejection of claims 6, 7, and 14-19 under 35 U.S.C. § 103(a) as being unpatentable over Yoksza in view of Skene and Conway in further view of Stam et al. (U.S. Patent Application Publication No. 2004/0047624, hereinafter "Stam"). This rejection is respectfully traversed.

Stam is cited as to the subject matter added by dependent claims 6, 7, and 14-19 and does not cure the deficiencies noted above as to the reliance on Yoksza in view of Skene and Conway as to respective parent independent claims 1 and 8.

Accordingly, it is respectfully submitted that dependent claims 6, 7, and 14-19 patentably define over the applied references for at least the same reason that respective parent independent claims 1 and 8 do and withdrawal of this improper rejection of dependent claims 6, 7, and 14-19 under 35 U.S.C. §103(a) as being allegedly unpatentable over Shenderova in view of Skene in further view of Stam is respectfully requested.

In addition, it is noted that the top of page 12 of the outstanding errs in stating that Stam "discloses the display device comprising a complementary light emitter." Stam discloses a lamp with plural LEDs that can produce light of different hues, not a "display device" as alleged.

Also, claims 6, 7 and 14-19 add features to those of the respective base independent claims 1 and 8. For example, dependent claims 7 and 16 each require that the luminous intensity of the complementary light emitter must be controlled in accordance with the luminous intensity of the other light emitter emitting the wavelength that affects a biorhythm. There is no reasonable teaching or reasonable suggestion of this in Stam. With further regard to claim 19, Stam does not teach that at least one of the LEDs is an electroluminescent diode.

Therefore, claims 6, 7 and 14-19 patentably define over the applied references for at least these reasons as well as because of their above-noted dependency. Therefore, withdrawal of this improper rejection of claims 6, 7 and 14-19 under 35 U.S.C. §103(a) as being allegedly unpatentable over Yoksza in view of Skene and Conway in further view of Stam is also respectfully requested on this basis.

E. Claims 20, 21, and 39-41

Item 8 on page 14 of the outstanding Action presents a rejection of claims 20, 21, and 39-41 under 35 U.S.C. § 103(a) as being unpatentable over Yoksza in view of Hecker (U.S. Patent No. 5,426,879) in further view of Skene and Conway. This rejection is respectfully traversed.

With respect to independent claim 20 it is first noted that the display devices of Yoksza and Hecker clearly operate in incompatible ways. The Yoksza light emitting diode (LED) array is formed with detachable modules that will display individual "pixels" to form a large-scale array display to make a direct display as shown by the display of the letter "E" of FIG. 3B, for example. On the other hand, the Hecker taught display is a "natural daylight window" that is formed as a thin window simulation unit with a sheet of transparent material having an imprinted "view" image thereon that will not change just as any real window view encompasses the same unchanging scenery. The lighting of Hecker is also designed to provide a natural-like daylight backlighting for the simulated view through the imprinted transparency that is in the thin simulation unit. Thus, a windowless interior can be provided with the Hecker simulated window.

Clearly, these two disparate reference teachings cannot be combined without destroying the intended operation of the display being modified and rendering the display being modified unsuitable for its intended purpose. This is again directly contrary to the above noted *Ratti* and *Gordon* decisions.

Adding confusion to this rejection is the fact that the first paragraph at the top of page 15 of the outstanding Action introduces previously relied upon Shenderova as being again relied upon instead of Yoksza. In any event, if the introduction of Shenderova, a reference not included in the stated ground of the rejection, was intentional, it renders this rejection untenable. See *In re Hoch,* 428 F.2d 1341, 1342 n.3 166 USPQ 406, 407 n. 3 (CCPA 1970) that requires all of the references being relied upon to be presented in the statement of the rejection for the rejection to be considered a valid 35 U.S.C. § 103(a) rejection.

Furthermore, nothing taught or reasonably suggested by Skene or Conway can be said to correct the above-noted deficiencies of Yoksza and Hecker, all as noted above relative to at least the rejection of claim 1. Accordingly, the rejection of independent claim 20 under 35 U.S.C. § 103(a) as being unpatentable over Yoksza in view of Hecker, Skene, and Conway is clearly improper and should be withdrawn.

Claims 21 and 39 variously depend from independent claim 20. Therefore, dependent claims 21 and 39 are respectfully submitted to be patentable over the combination of Yoksza in view of Hecker, Skene, and Conway for at least the reasons presented above with respect to independent claim 20. Reconsideration and withdrawal of the rejection of dependent claims 21 and 39 under 35 U.S.C. § 103(a) is, therefore, also respectfully requested.

Turning to independent claim 40, it is noted that this claim is like independent claim 20 in that the claimed display device must irradiate "an image display section, which is for displaying an image, with light from a light source so as to cause the image display section to display the image." Thus, the above-noted incompatibility of the display operations taught by Yoksza and Hecker is again applicable based on the cited *Ratti* and *Gordon* decisions.

Also, claim 40 is like claim 1 in that the luminous intensity of the first light emitter must be "switchable relative to an input video signal independently of the white light emitter that emits having another wavelength that has no affect on biorhythm." Thus, the above-noted deficiencies of Yoksza in view of Skene and Conway as to independent claim 1 also apply to independent claim 40.

Accordingly, the rejection of independent claim 40 under 35 U.S.C. § 103(a) as being unpatentable over Yoksza in view of Hecker, Skene, and Conway is clearly improper for the

reasons noted above as to independent claims 1 and 20. Consequently, it is respectfully submitted that this rejection of independent claim 40 should also be withdrawn.

Claim 41 depends from independent claim 40. Therefore, dependent claim 41 is respectfully submitted to be patentable over the combination of Yoksza in view of Hecker, Skene, and Conway for at least those reasons presented above with respect to amended independent claim 40. Reconsideration and withdrawal of the rejection of dependent claim 41 under 35 U.S.C. § 103(a) is, therefore, also respectfully requested.

F. Claims 22 and 25-30

Item 9 on page 20 of the outstanding Action presents a rejection of claims 22 and 25-30 under 35 U.S.C. § 103(a) as being unpatentable over Yoksza in view of Hecker, Skene, and Conway and further view of Stam. This rejection is respectfully traversed.

Stam is cited as to the subject matter added by dependent claims 22 and 25-30 and does not cure the deficiencies noted above as to the reliance on Yoksza in view of Hecker, Skene, and Conway as to parent independent claim 20.

Accordingly, it is respectfully submitted that dependent claims 22 and 25-30 patentably define over the applied references for at least the same reason that parent independent claim 20 does and withdrawal of this improper rejection of dependent claims 22, and 25-30 under 35 U.S.C. §103(a) as being allegedly unpatentable over Yoksza in view of Hecker, Skene, and Conway and further view of Stam is respectfully requested.

G. Claims 31-33

Item 10 on page 22 of the outstanding Action presents a rejection of claims 31-33 under 35 U.S.C. § 103(a) as being unpatentable over Yoksza in view of Hecker, Skene, and Conway and further view of Terman. This rejection is respectfully traversed.

Terman is cited as to the subject matter added by dependent claims 31-33 and does not cure the deficiencies noted above as to the reliance on Yoksza in view of Hecker, Skene, and Conway as to parent independent claim 20.

Accordingly, it is respectfully submitted that dependent claims 31-33 patentably define over the applied references for at least the same reason that parent independent claim 20 does and withdrawal of this improper rejection of dependent claims 31-33 under 35 U.S.C. §103(a) as being allegedly unpatentable over Yoksza in view of Hecker, Skene, and Conway and further view of Terman is respectfully requested.

H. Claim 34

Item 11 on page 23 of the outstanding Action presents a rejection of claim 34 under 35 U.S.C. § 103(a) as being unpatentable over Yoksza in view of Hecker, Skene, and Conway and further in view of Kerr. This rejection is respectfully traversed.

Kerr is cited as to the subject matter added by dependent claim 34 and does not cure the deficiencies noted above as to the reliance on Yoksza in view of Hecker, Skene, and Conway as to parent independent claim 20.

Accordingly, it is respectfully submitted that dependent claim 34 patentably defines over the applied references for at least the same reason that parent independent claim 20 does and withdrawal of this improper rejection of dependent claim 34 under 35 U.S.C. §103(a) as being allegedly unpatentable over Yoksza in view of Hecker, Skene, and Conway and in further view of Kerr is respectfully requested.

I. Claim 35

Item 12 on page 24 of the outstanding Action presents a rejection of claim 35 under 35 U.S.C. § 103(a) as being unpatentable over Yoksza in view of Hecker and Terahara et al. (U.S. Patent Application Publication No. 2003/0016432, hereinafter "Terahara"). This rejection is respectfully traversed.

Independent claim 35 is like independent claim 20 in that the display device must irradiate "an image display section, which is for displaying an image, with light from a light source so as to cause the image display section to display the image." Thus, the above-noted incompatibility of the operations taught by Yoksza and Hecker is again applicable based on the cited *Ratti* and *Gordon* decisions.

Also, it appears that the outstanding Action once again violates the holding in the above-noted *Benno* decision and tries to rely on the scope of coverage of claim 1 of Terahara as overlapping the claimed wavelengths of the claim 35 transmittance controlling means ("for controlling transmittance in a wavelength band of 445 nm to 480 nm"), even though there is no actual disclosure of the Terahara optical filter being operated to control transmittance to be in this wavelength band of 445 nm to 480 nm. Once again, the above-noted *Benno* decision establishes that "[t]he scope of a patent's claims determines what infringes the patent; it is no measure of what it discloses." Moreover, simply because paragraphs [0010] and [0012] disclose that an optical filter can be set to allow passage of a wavelength band relative to a central wavelength, this cannot be twisted into a teaching of the claim 35 transmittance controlling means that must control "transmittance in a wavelength band of 445 nm to 480 nm."

Accordingly, the rejection of independent claim 35 under 35 U.S.C. § 103(a) as being unpatentable over Yoksza in view of Hecker and Terahara is clearly improper for the reasons noted above and it is respectfully submitted that this rejection of independent claim 35 should be withdrawn.

J. Claims 36 and 37

Item 13 on page 26 of the outstanding Action presents a rejection of claims 36 and 37 under 35 U.S.C. § 103(a) as being unpatentable over Yoksza in view of Skene and Terman. This rejection is respectfully traversed.

Independent claim 36 is like claim 1 in that the claim requires a "display device for displaying an image by using light of a light emitter," where "the light emitter emits light having such a wavelength that affects a biorhythm." As noted above relative to the rejection of claim 1, whatever else could be said of the Skene taught light source(s) that must provide work environment lighting, it cannot be reasonably said that Skene teaches or suggests the use of a display as such a light source. Moreover, the Examiner does not explain how the Yoksza light emitting diode (LED) detachable modules incorporated into a large-scale array display can be modified to provide both the Yoksza intended display functions and capabilities while also providing the Skene light source that must be suitable for maintaining sufficient light "enabling people to work correctly." Thus, under the case law cited above, it would clearly not have been obvious to have attempted to modify Yoksza to be the Skene taught light source.

Accordingly, the rejection of independent claim 36 under 35 U.S.C. § 103(a) as being unpatentable over Yoksza in view of Hecker and Terman is clearly improper for the reasons noted above and it is respectfully submitted that this rejection of independent claim 36 should be withdrawn.

Claim 37 depends from independent claim 36. Therefore, dependent claim 37 is respectfully submitted to be patentable over the combination of Yoksza in view of Skene and Terman for at least those reasons presented above with respect to amended independent claim 36. Reconsideration and withdrawal of the rejection of dependent claim 37 under 35 U.S.C. § 103(a) is, therefore, also respectfully requested.

Additional Cited References

Since the remaining references cited by the Examiner have not been utilized to reject the claims, but have merely been cited to show the state of the art, no comment need be made with respect thereto.

Conclusion

Applicants respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn for the above-noted reasons. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

Should there by any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Raymond F. Cardillo Jr., Registration No. 40,440 at the telephone number of the undersigned below to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Director is hereby authorized in this, concurrent, and future replies to charge any fees required during the pendency of the above-identified application or credit any overpayment to Deposit Account No. 02-2448.

Dated: July 6, 2010

Respectfully submitted,

By _____
Michael R. Cammarata
Registration No.: 39491
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road, Suite 100 East
P.O. Box 747
Falls Church, VA 22040-0747
703-205-8000